

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the previous amendments and the following remarks.

Before discussing the subject matter recited in the claims of this application and as a preface to commenting on the issues raised in the most recent Official Action, the following general overview is provided of a packaging container according to at least one embodiment described and illustrated in the present application.

The packaging container illustrated in Figs. 1 and 2 includes a top 13 formed of a first material or material combination and a body 12 formed of a second material or material combination different from the first material or material combination. The top 13 and the body 12 are chemically connected, e.g., by fusing at their interface. The specification notes that the top 13 and the body 12 would need to be separated prior to recycling the packaging container in view of their different respective materials.

The top 13 of the packaging container illustrated in Figs. 1 and 2 further includes a free edge defining a pouring opening 14. To enable easy separation of the top 13 from the body 12, and thus easier recycling of the packaging container, the top is further provided with a tearing line 16 extending essentially from the pouring opening 14 towards an interface between the top 13 and the body 12 and essentially along an entirety of the interface.

As further discussed in the specification, Fig. 3 discloses a packaging container having these features, as well as a lid which covers the pouring opening and which is at least partially removable by tearing along a weakening line in the top.

The tearing line in this configuration extends from the interface to a part of the top which is exposed as the free edge when the lid is at least partially removed, as well as essentially along an entirety of the interface.

Turning now to the claims, the Examiner has rejected Claim 1, the only previously presented independent claim, as being unpatentable based on the disclosures in U.S. Patent No. 4,934,585, hereinafter Reil, and JP9-290852.

Reil relates to a container consisting of a closure means injection molded onto a tube-shaped part. The closure means comprise a circular line of weakness and a gripper device to enable opening of the container by removal of a closure wall (16) from the closure means (5). Applicants note that Reil is not at all directed towards recycling of a container since the tearing along the line of weakness results in two parts of the same material.

In the Claim 1 rejection, the Examiner asserts that the Reil patent discloses the recited packaging container save for a tearing line as defined in the claim. The Examiner further asserts that JP9-290852 discloses a tearing line extending from an opening toward an interface and around substantially the entirety of the interface, and that it therefore would have been an obvious modification of the container disclosed in the Reil patent to include a tearing line as defined in the claim.

Applicants respectfully submit that to the extent JP9-290852 may disclose a tearing line, that tearing line is for removing a closure, not for separating two parts of an open container for recycling purposes. Indeed, the closure in JP9-290852 is not chemically connected to the container, and so there is no need for a tearing line extending along the interface between the closure and the container. When the closure is torn in a longitudinal direction of the container, it can be separated from

the container without further tearing since the closure and the container are only physically connected.

The structure and function of the tearing line defined in the claim is quite different from the tearing line disclosed in JP9-290852. In particular, JP9-290852 does not disclose a tearing line which extending essentially from a pouring opening towards an interface between a first portion and a second portion and essentially along an entirety of the interface. Nor does JP9-290852 disclose a tearing line configured to separate two parts made of different materials. Indeed, Applicants respectfully submit that to the extent an ordinarily skilled artisan may modify the container disclosed in Reil in light of the teachings in JP9-290852, the resultant container would, if anything, include a tearing line configured for removal of a closure, which clearly would not have the structure recited in Claim 1.

In light of the foregoing, Applicants respectfully submit that the Examiner has failed to articulate a reasoning based on a rational underpinning to support a conclusion of obviousness of the packaging container recited in Claim 1. Withdrawal of the rejection of Claim 1 is therefore respectfully requested.

New independent Claim 19 recites a packaging container including a first portion formed of a first material or material combination, a lid provided on the first portion and configured to be at least partially removed from the first portion so that a free edge of the first portion is exposed and defines a pouring opening in the first portion, a second portion formed of a second material or material combination different from the first material or material combination, wherein the first portion and the second portion are connected at an interface between the first portion and the second portion, wherein the first portion further includes a tearing line extending

essentially from the interface to a part of the first portion which is exposed as the free edge when the lid is at least partially removed, the tearing line also extending essentially along an entirety of the interface.

New independent Claim 21 recites a packaging container including a top formed of a plastic material and including a weakening line allowing a lid portion of the top to be at least partially removed from a remaining portion of the top by tearing along the weakening line, a sleeve formed of a fibre based packaging laminate, wherein the top and the sleeve are connected at an interface between the top and the sleeve, wherein the top further includes a tearing line extending essentially from the weakening line to the interface, the tearing line also extending essentially along an entirety of the interface.

Applicants respectfully submit that new Claims 19 and 21 are clearly distinguishable from the applied prior art. For example, even assuming some basis exists for the Examiner's proposed combination of Reil and JP9-290852, the resultant container would not include a lid, a free edge, and a tearing line as recited, in combination with the other features recited in Claim 19, or a lid portion, a weakening line and a tearing line as recited, in combination with the features recited in Claim 21.

The dependent claims are allowable at least by virtue of their dependence from allowable independent claims. Thus, a detailed discussion of the additional distinguishing features recited in the dependent claims is not set forth at this time.

Early and favorable action with respect to this application is respectfully requested.

Should any questions arise in connection with this application or should the Examiner believe that a telephone conference with the undersigned would be helpful in resolving any remaining issues pertaining to this application, the undersigned respectfully requests that he be contacted at the number indicated below.

The Director is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17 and 1.20(d) and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800.

Respectfully submitted,

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